

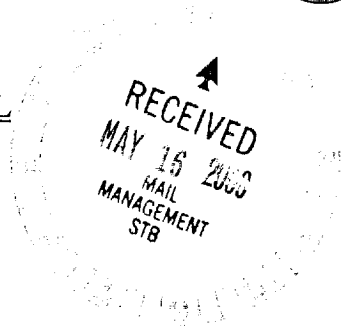
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



May 15, 2000

VIA OVERNIGHT MAIL



Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, DC 20423-0001

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Office of the Secretary

MAY 16 2000

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Public Record

Dear Secretary:

Re: STB Ex Parte 582 (Sub-No.1)
Major Rail Consolidation Procedures

Enclosed for filing is an original and 26 copies of a document titled "Comments of the California Public Utilities Commission." Please file-stamp the extra copy and return it to the undersigned in the enclosed stamped, self-addressed envelope. Also enclosed is an electronic copy of the filing in WordPerfect format on a 3.5-inch IBM compatible floppy diskette.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth L. Koss".

Kenneth L. Koss, Director
Rail Safety and Carriers Division

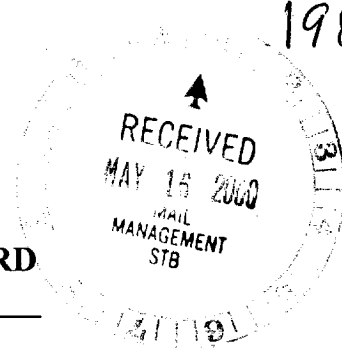
Enclosures (27 paper, plus 1 diskette)

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 582 (Sub-No. 1)
Major Rail Consolidation Procedures

Comments of the California Public Utilities Commission



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The California Public Utilities Commission (Commission) respectfully submits its comments in Surface Transportation Board (Board) Ex Parte 582 (Sub-No. 1), "Major Rail Consolidation Procedures."

I. INTRODUCTION

The Commission has participated in numerous Board rulemakings and rail merger proceedings. Most recently, we submitted comments in Ex Parte No. 582, "Public Views on Major Rail Consolidations" and presented our recommendations to the Board in hearings held at Washington, DC in March of this year.

The Commission is also the state agency in California with primary jurisdiction over rail safety and works in partnership with the Federal Railroad Administration (FRA) to help protect California's citizens, rail employees and the environment from rail accidents. The State rail safety program, in concert with the FRA, provides a high level of expertise to assist the industry in the prevention of railroad accidents as well as the regulatory compliance/enforcement arena.

We concur with the assessment expressed in the Advance Notice of Proposed Rulemaking (ANPRM) that there is a need to consider whether the Board's longstanding merger evaluation policies are appropriate given the current structure of the rail industry. The rail industry has undergone an extreme transformation as recent consolidations have resulted in principally four large carriers serving the nation. This increased market concentration suggests a need for reviewing proposed mergers with a greater emphasis on service levels and competitive effects.

During the March Ex Parte 582 hearings and in the comments filed by numerous parties several dominant themes emerged – 1) promises of improved service and benefits resulting from past mergers have not been realized; 2) existing industry concentration may be inhibiting competition and the prospect of future mergers may further diminish competition; and 3) any regulatory response or “re-regulation” of the industry to address service and rate matters must be done so prudently.

II. RECOMMENDATIONS

In response to the ANPRM, we have focused our comments and suggestions in two principal areas – **SAFETY** and **SERVICE**. These recommendations consist of a requirement for merger applicants to continue to prepare and file a “Safety Integration Plan” in an enhanced version, and additionally to also file a “Service Integration Plan ” which would be a new requirement. In connection with the “Service Integration Plan”, we also propose that the Board form and administer an escrow account funded by the railroads which would provide shippers with an efficient method to collect damages if

service falters. The public would be given an opportunity to comment on the adequacy of each plan during the merger review process.

A. "Safety Integration Plan" - Assuring The Safety Of Rail Operations

Safety of the nation's rail network is of paramount importance. Railroad management, labor and government regulators all share in the responsibility to protect the public and environment from unsafe conditions. Safety impacts must be considered in the review of a proposed merger particularly since combining the operations of existing large-scale carriers will be an exceedingly complex process. We are concerned that in future mergers involving such large carriers management attention may be diverted away from its focus on safety to address service problems which have become a common feature of recent consolidations. To avoid such a condition, management must be committed to making operational decisions with safety utmost in mind.

We endorse the Board's recognition in the ANPRM that Safety Integration Plans both promote and enhance safety, however, we urge the Board to require the safety plan as a condition of every merger rather than require their use on a discretionary basis. To make the safety plan more effective, we offer the following items for inclusion into the existing process. The Board could adopt these recommendations on an interim basis while the joint rulemaking on the subject with the FRA remains open.

B. "Enhanced" Safety Integration Plan

We recommend that the Board require merger applicants to file a safety plan in all cases and that the safety plan be expanded to include the following elements:

- Combined review of current FRA accident/incident history records.
- Review of proposed operating rule consolidations/changes, particularly those involving track train dynamics/train make-up (TTD-TMU) procedures including a technical analysis and justification of any TTD-TMU procedure changes that are less restrictive and/or result in a reduced margin of safety.
- Review of the combined employee rule/safety procedures training as will be submitted to FRA in compliance with 49 CFR Part 217 including the program of field efficiency testing, or other alternative means proposed to ensure employee understanding of rules/safety procedures.
- Review of the combined locomotive engineer training /certification program for locomotive engineers as required by 49 CFR Part 240.
- Review of the combined training modules for training of all crafts.
- 2-5 year review of FRA compliance/enforcement action(s) history involving Track, Motive Power and Equipment, Signal & Train Control, Operating Practices, and Hazardous Materials.
- Review of emergency response/preparedness plans including notification procedures and locations of all centralized emergency /incident coordination centers.
- Proposed safety operating structure and re-alignment: would include (but not be limited to) proposals and justifications for any significant changes in methods of train operations (Train Control System, Track Warrant Control, Automatic Block Signaling, etc), proposals for any changes or relocation of train dispatching operations, proposals for any changes or relocations in key headquarter and regional management positions.
- Review of the progress in the applicants' long-term development of "Positive Train Separation" as recommended by the National Transportation Safety Board.

We also recommend that the Board, with FRA assistance, conduct an assessment of each applicant's safety record. If the accident rate of either carrier is below the industry average or otherwise determined to be unacceptable, the Board should withhold approval of the merger until the applicants demonstrate their safety performance can be returned to acceptable levels.

C. "Service Integration Plan" - Assuring Service Adequacy

The public interest is served when a rail merger results in improved levels of service. Unfortunately, most recent mergers have resulted in significant service disruptions and have failed to deliver on promises of providing shippers with faster transit times, increased car supply and related enhancements. The harm caused by these failures could be catastrophic to the nation's economy. The Union Pacific's serious service failures following its combination with Southern Pacific reportedly resulted in a \$4 billion loss to the nation's economy. Recently, Board Chairman Linda Morgan publicly criticized CSX Railroad's lagging efforts in normalizing its service following the Conrail acquisition.

To prevent such service problems, we recommend that the applicants prepare a well-reasoned "Service Integration Plan" showing how the operations of each railroad will be combined so that service levels will be maintained or improved. Performance standards would be set to establish benchmarks to determine whether service quality may be deteriorating. The plan would include contingencies describing steps the applicant would take if service disruptions or congestion develops such as agreements

with other carriers to reroute traffic, mutual aid agreements, joint dispatch, or access rights, etc.

To hold the applicants accountable to their plan, we recommend that the Board establish and administer an escrow account funded by the merged railroad so that aggrieved shippers may obtain damages in the event the carrier fails to meet its performance standard. Additional penalties should also be set if the carrier attempts to improve service by compromising safety such as overworking train crews or operating trains at unsafe speeds.

Suggested service performance standards include the following:

- Transit times of trains between terminals and time to transport railcars from the carrier's terminal to shipper facilities.
- Percentage of shipper and shortline orders for railcars filled by the merged rail carrier.
- Car utilization rates that will result from combining administration of the railcar fleets.
- List of gateways that the merged carrier will keep open to allow shippers to route cars on other railroads.
- Time involved in the interchange of railcars to and from the merged carrier's lines.
- Plans to improve the efficiency of rail yards and resulting reduction in time required to move railcars through terminals.
- Plans to improve existing track structure to allow for greater train speeds.
- Plans for increasing the capacity of high volume routes to reduce congestion at peak shipping periods or for future traffic growth.

III. CONCLUSION

We appreciate the Board's consideration of our comments and suggestions. The rail industry must offer customers high levels of service while providing the highest standards of safety if it is to remain competitive in today's economy. California believes that it is critical that the Board ensure that the railroads provide the highest levels of safety in all rail operations. Safety should not be compromised whether a merger is approved or not. Where a merger is approved, there should be no trade-off that might reduce safety. Our comments are aimed at achieving this result.

Dated: May 15, 2000

Respectfully submitted,



Kenneth L. Koss, Director
Rail Safety and Carriers Division

California Public
Utilities Commission
505 Van Ness Avenue, Room 2102
San Francisco, CA 94102

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **Comments of the California Public Utilities Commission** by mailing by first-class mail a copy thereof properly addressed to each party in the captioned proceeding as identified and directed by the Surface Transportation Board in STB Ex Parte No. 582 (Sub-No. 1), # 30990, decided April 27, 2000, and as contained in the following list.

Executed at San Francisco, California this 15th day of May, 2000.



Mary Bové Holton

FREDERIC L WOOD
THOMPSON HINE & FLORY LLP
1920 N STREET
WASHINGTON DC 20036-1601 US

SHIRLEY J YBARRA
COMMONWEALTH OF VIRGINIA
PO BOX 1475
RICHMOND VA 23218 US

RECEIVED
MAY 16 2000
MAIL
MANAGEMENT
STB

EDWARD WYTKIND EXECUTIVE DIRECTOR
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
1025 CONNECTICUT AVE NW SUITE 1005
WASHINGTON DC 20036 US

DANIEL YOEST
CROSSROAD CARRIERS
1835 EAST PARK PLACE BLVD STE 107
STONE MOUNTAIN GA 30087 US

E. Thomas Coleman
VP Government Relations
BASF Corporation
601 13th Street, N.W.
Washington, DC 20005

Michael F. McBride
LeBoeuf, Lamb, Greene & MacRae
1875 Connecticut Avenue, N.W., Suite 1200
Washington, DC 20009-5728

Jo A. DeRoche
Weiner, Brodsky, Sidman & Kider, P.C.
1300 19th Street, N.W., Fifth Floor
Washington, DC 20036-160

Jon H. Mielke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard Ave. — Dept. 408
Bismarck, ND 58505-0480

Stephen Ferree
Westvaco Corporate Center
1011 Boulder Springs Drive
Richmond, VA 23225

Bruce W. Neely
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1875 Connecticut Avenue, N.W.
Washington, DC 20009-5728

Wayne Hammon
Director of Government Relations
National Association of Wheat Growers
415 Second Street, N.E., Suite 300
Washington, DC 20002

Jim Peterson, Marketing Director
North Dakota Wheat Commission
4023 State Street
Bismarck, ND 58501-0690

Charles King, President
Snively, King, Majoros, O'Connor & Lee
1220 L Street, N.W.
Washington, DC 20005

Alice C. Saylor
Vice President & General Counsel
American Short Line and Regional Railroad Association
1120 G Street, N.W., Suite 520
Washington, DC 20005-3889

Thomas A. Schmitz, President
TAS Consulting, Inc.
P.O. Box 71066
Chevy Chase, MD 20813-1066

Richard L. Jones
Bentonite Performance Minerals
410 Seventeenth Street, Suite 800
Denver, CO 80202

Eric W. Tibbetts
Manager, Rail Center
Chevron Chemical Company LLC
1301 McKinney Street
Houston, TX 77010-3029

Jeffrey O. Moreno, Esq.
Thompson, Hine & Flory LLP
1920 N Street, N.W.
Washington, DC 20036-1601

Patrick J. Whalen
President, Fulfillment Systems Int'l.
908 Niagara Falls Boulevard
North Tonawanda, NY 14120-2060

Richard V. Willmarth
Traffic Manager
GROWMARK, Inc.
1701 Towanda Avenue
Bloomington, IL 61701

RICHARD A ALLEN
ZUCKERT SCOUTT & RASENBERGER L L P
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3309 US

JOHN H BROADLEY
JOHN H. BROADLEY & ASSOCIATES, P.C.
1054 - 31ST STREET NW 2ND FLOOR
WASHINGTON DC 20007 US

ANTHONY H ANIKEEFF
ALLIANCE OF AUTOMOBILE MANUFACTURERS
1401 H STREET NW SUITE 900
WASHINGTON DC 20005 US

SANDRA L BROWN
TROUTMAN SANDERS LLP
1300 I STREET NW SUITE 500 EAST
WASHINGTON DC 20005-3314 US

DAVID J BAIN JR
MASSACHUSETTS EXECUTIVE OF TRANSPORTATION
10 PARK PLAZA STE 3170
BOSTON MA 02116 US

GLENDA CAFER
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA KS 66604 US

REX BEASLEY
KANSAS OFFICE OF THE ATTORNEY GENERAL
120 SW 10TH STREET MEMORIAL HALL
TOPEKA KS 66612 US

RACHEL DANISH CAMPBELL
HOPKINS & SUTTER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006-4103 US

MICHAEL R BENOIT
PROCTER & GAMBLE COMPANY
1 PROCTER & GAMBLE PLAZA
CINCINNATI OH 45202-3315 US

THOMAS C CANTER
WESTERN COAL TRANSPORTATION ASSOCIATION
4 MEADOW LARK LANE STE 100
LITTLETON CO 80127-5718 US

L BLAINE BOSWELL
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

KENNETH S CHANEY JR
SOUTHERN COMPANY SERVICES INC
600 N. 18TH STREET
BIRMINGHAM, AL 35219 US

MICHAEL M BRILEY
SHUMAKER LOOP & KENDRICK
NORTH COURTHOUSE SQUARE - 1000 JACKSON
TOLEDO OH 43624-1573 US-

GEORGIA POWER COMPANY
GULF POWER COMPANY
MISSISSIPPI POWER COMPANY
SAVANNAH ELECTRIC & POWER COMPANY

EDWARD S CHRISTENBURY
TENNESSEE VALLEY AUTHORITY
400 WEST SUMMIT HILL DRIVE
KNOXVILLE TN 37902 US

JOHN M CUTLER JR
MCCARTHY SWEENEY HARKAWAY PC
1750 PENNSYLVANIA AVE N W SUITE 1105
WASHINGTON DC 20006 US

GORDON W CHU
VANCOUVER PORT AUTHORITY
200 GRANVILLE STREET
VANCOUVER BC V6C 2P9 CD

SANDRA J DEARDEN
MDCO TRANSPORTATION MANAGEMENT LTD
166 WEST WASHINGTON SUITE 700
CHICAGO IL 60602 US

DAVID CHURCH
CANADIAN PULP AND PAPER ASSOCIATION
1155 METCALFE STREET
MONTREAL PQ H3B 4T6 CD

NICHOLAS J DIMICHAEL
THOMPSON HINE & FLORY LLP
1920 N STREET NW STE 800
WASHINGTON DC 20036-1601 US

CHARLES H CLAY
HEAD SEIFERT & VANDER WEIDE PA
120 SOUTH SIXTH STREET ONE FINANCIAL
PLAZA SUITE 2400
MINNEAPOLIS MN 55402 US

PETE DINGER
AMERICAN PLASTICS COUNCIL
1300 WILSON BOULEVARD SUITE 800
ARLINGTON VA 22209 US

PAUL D COLEMAN
HOPPEL MAYER & COLEMAN
1000 CONNECTICUT AVENUE NW SUITE 400
WASHINGTON DC 20036 US

PAUL M DONOVAN
LAROE WINN MOERMAN & DONOVAN
3900 HIGHWOOD COURT NW
WASHINGTON DC 20007 US

ROBERT B CULLIFORD
GUILFORD RAIL SYSTEM
LAW DEPT., IRON HORSE PARK
NORTH BILLERICA MA 01862 US

KELVIN J DOWD
SLOVER & LOFTUS
1224 17TH STREET N W
WASHINGTON DC 20036 US

PAUL A CUNNINGHAM
HARKINS CUNNINGHAM
801 PENNSYLVANIA AVENUE, NW STE 600
WASHINGTON DC 20004-2664 US

DANIEL DUFF
AMERICAN PUBLIC TRANSPORTATION ASSOCIATIO
1201 NEW YORK AV NW, STE 400
WASHINGTON DC 20005 US

DIANE C DUFF
ALLIANCE FOR RAIL COMPETITION
1920 N ST. NW SUITE 800
WASHINGTON DC 20036 US

LOUIS E GITOMER
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

RICHARD S EDELMAN
O'DONNELL SCHWARTZ & ANDERSON PC
1900 L STREET NW SUITE 707
WASHINGTON DC 20036 US

DAVID W GOFFIN
CANADIAN CHEMICAL PRODUCERS ASSOCIATION
350 SPARKS STREET SUITE 805
OTTAWA ON K1R 7S8 CD

ROBERT D ELDER
MAINE DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA ME 04333-0016 US

ANDREW P GOLDSTEIN
MCCARTHY, SWEENEY & HARKAWAY P.C.
2175 K STREET, NW SUITE 600
WASHINGTON DC 20037 US

DANIEL R ELLIOTT III
ASST GENERAL COUNSEL UNITED
TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

EDWARD D GREENBERG
GALLAND, KHARASCH, GREENBERG,
FELLMAN & SWIRSKY, PC
1054 THIRTY-FIRST STREET NW, STE 200
WASHINGTON DC 20007-4492 US,

JOHN B FICKER
WEYERHAEUSER COMPANY
P O BOX 2999
TACOMA WA 98477-2999 US

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES
10 G STREET N.E. STE 460
WASHINGTON DC 20002 US

DAVID FINKLEA
GREATER HOUSTON PARTNERSHIP
1200 SMITH STE 700
HOUSTON TX 77002-4400 US

NATALIE J HARDER
BUFFALO NIAGARA PARTNERSHIP
300 MAIN PLACE TOWER
BUFFALO NY 14202-3797 US

JANET H GILBERT
WISCONSIN CENTRAL SYSTEM
6250 NORTH RIVER ROAD SUITE 9000
ROSEMONT IL 60018 US

MAUREEN A. HEALEY
SOCIETY OF THE PLASTICS INDUSTRY INC
1801 K STREET NW SUITE 600K
WASHINGTON DC 20006-1301 US

ERIKA Z JONES
MAYER BROWN & PLATT
1909 K STREET, NW
WASHINGTON DC 20006-1101 US

SHARON BOMER LAURITSEN
U S DEPARTMENT OF AGRICULTURE
PO BOX 96456
WASHINGTON DC 20090-6456 US

RICHARD L JONES
BENTONITE CORPORATION
410 SEVENTEENTH STREET SUITE 800
DENVER CO 80202 US

JOSEPH E LEMA
NATIONAL MINING ASSOCIATION
1130 17TH ST NW
WASHINGTON DC 20036-4604 US

JONATHAN L KAZENSE
KEOKUK JUNCTION RAILWAY CO
1318 SOUTH JOHANSON ROAD
PEORIA IL 61607 US

LARRY E LEMOND
EASTERN SHORE RAILROAD INC
PO BOX 312
CAPE CHARLES VA 23310 US

TIMI NICKERSON KENEALY
ECKERT SEAMANS CHERIN & MELLOTT, LLC
1250 24TH STREET, N.W., 7TH FLOOR
WASHINGTON DC 20037 US

JOHN H LESEUR
SLOVER & LOFTUS
1224 17TH STREET NW
WASHINGTON DC 20036-3081 US

J PETER KLEIFGEN
STATESRAIL RAILROAD
7557 RAMBLER ROAD, STE 280
DALLAS TX 75231 US

TIMOTHY LOVAIN
DENNY MILLER MCBEE ASSOCIATES INC
400 N CAPITOL STREET NW SUITE 363
WASHINGTON DC 20001 US

ROBERT S KORPANTY
U S DEPT. OF ARMY, MILITARY TRAFFIC
MANAGEMENT COMMAND
720 THIMBLE SHOALS BLVD, SUITE 130
NEWPORT NEWS VA 23606-2574 US

DENNIS G LYONS
ARNOLD & PORTER
555 TWELFTH STREET NW, STE 940
WASHINGTON DC 20004-1206 US

HON JOHN J LAFALCE
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3229 US

GORDON P MACDOUGALL
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

JOHN D HEFFNER
REA CROSS & AUCHINCLOSS
1707 L STREET, NW, STE 570
WASHINGTON DC 20036 US

KAREN M HUIZENGA
MIDAMERICAN ENERGY COMPANY
106 EAST SECOND STREET
DAVENPORT IA 52801 US

J MICHAEL HEMMER
COVINGTON & BURLING
P O BOX 7566
1201 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004 US

FORREST C HUME
1281 WEST GEORGIA STREET STE 201
VANCOUVER BC V6E 3J7 CD

WILLIAM E HICKMAN
EXXONMOBIL GLOBAL SERVICES COMPANY
13501 KATY FREEWAY
HOUSTON TX 77079-1398 US

TERENCE M HYNES
SIDLEY & AUSTIN
1722 EYE STREET NW
WASHINGTON DC 20006-5304 US

MEMBER OF CONGRESS
HONORABLE RICK HILL
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515

THOMAS F JACKSON
IOWA DEPARTMENT OF TRANSPORTATION
800 LINCOLN WAY
AMES IA 50010 US

ERIC M HOCKY
GOLLATZ GRIFFIN & EWING
P O BOX 796
213 WEST MINER STREET
WEST CHESTER PA 19381-0796 US

GEORGE H JELLY
SHELL CHEMICAL COMPANY
P O BOX 2463
ONE SHELL PLAZA
HOUSTON TX 77252-2463 US

DENNIS HOWARD
OKLAHOMA DEPARTMENT OF AGRICULTURE
2800 N LINCOLN BLVD
OKLAHOMA CITY OK 73105 US

JAMES JOHNSON
EMPIRE WHOLESALE LUMBER CO
PO BOX 249
AKRON OH 44309-0249 US

CLAUDIA L HOWELLS
OREGON DEPARTMENT OF TRANSPORTATION
555 13TH ST NE STE 3
SALEM OR 97301-4179 US

WAYNE E JOHNSON
MCKINLEY PAPER COMPANY
10501 MONTGOMERY BLVD SUITE 300
ALBUQUERQUE NM 87111-3846 US

JOHN K MASER III
THOMPSON HINE & FLORY LLP
1920 N STREET NW, STE 800
WASHINGTON DC 20036-1601 US

CHRISTOPHER A MILLS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

NICHOLAS P MATICH
GENERAL MOTORS
PO BOX 9015
30400 MOUND ROAD
WARREN MI 48090-9015 US

JOHN F MITTLEIDER
NORTH DAKOTA BARLEY COUNCIL
505 40TH STREET SW, STE E
FARGO ND 58103-1184 US.

IAN MAY
COUNCIL OF FOREST INDUSTRIES
1200 - 555 BURRARD STREET
VANCOUVER BC V7X 1S7 CD

G PAUL MOATES
SIDLEY & AUSTIN
1722 EYE STREET NW
WASHINGTON DC 20006 US

GEORGE W MAYO JR
HOGAN & HARTSON L L P
555 THIRTEENTH STREET NW COLUMBIA SQUARE
WASHINGTON DC 20004-1109 US

RALPH J MOORE JR
SHEA & GARDNER
1800 MASSACHUSETTS AVENUE NW
WASHINGTON DC 20036-1872 US

THOMAS F MCFARLAND JR
MCFARLAND & HERMAN
20 NORTH WACKER DRIVE SUITE 1330
CHICAGO IL 60606-2902 US

KARL MORELL
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

ROBERT L. MCGEORGE
U. S. DEPT. OF JUSTICE, ANTITRUST DIVISION
325 7TH ST, NW, 5TH FLOOR
WASHINGTON DC 20530 US

JEFFREY O MORENO
DONELAN CLEARY WOOD MASER
1100 NEW YORK AVENUE N W, SUITE 750
WASHINGTON DC 20005-3934 US

ROBERT R MERHIGE III
VIRGINIA PORT OF AUTHORITY
600 WORLD TRADE CENTER
NORFOLK VA 23510 US

WILLIAM A MULLINS
TROUTMAN SANDERS LLP
1300 I STREET NW SUITE 500 EAST
WASHINGTON DC 20005-3314 US

GARY D MYERS
THE FERTILZER INSTITUTE
501 SECOND STREET NE
WASHINGTON DC 20002 US

TOM O'CONNOR
SNAVELY KING MAJOROS O'CONNOR & LEE INC
1220 L ST NW SUITE 410
WASHINGTON DC 20005 US

HON JERROLD NADLER
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HUNTER L PRILLAMAN
NATIONAL LIME ASSOCIATION
200 NORTH GLEBE ROAD SUITE 800
ARLINGTON VA 22203-3728 US

KURT J NAGLE
AMERICAN ASSOC OF PORT AUTHORITIES
1010 DUKE STREET
ALEXANDRIA VA 22314 US

HON JACK QUINN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3230 US

BRUCE W NEELY
LEBOEUF LAMB GREENE & MACRAE L L P
1875 CONNECTICUT AVE NW SUITE 1200
WASHINGTON DC 20009-5728 US

RICHARD T RE
SENECA SAWMILL COMPANY
P O BOX 851
EUGENE OR 97440-0851 US

ROBERT K NEFF
AMEREN SERVICES, ONE AMEREN PLAZA
PO BOX 66149, MC 611
1901 CHOUTEAU AVENUE
ST LOUIS MO 63166-6149 US

JAMES P REDEKER
NEW JERSEY TRANSIT
ONE PENN PLAZA - EAST
NEWARK NJ 07105-2246 US

RICHARD W NEWPHER
AMERICAN FARM BUREAU FEDERATION
600 MARYLAND AVE SW STE 800
WASHINGTON DC 20024 US

DAVID C REEVES
TROUTMAN SANDERS LLP
1300 I STREET NW STE 500 EAST
WASHINGTON DC 20005-3314 US

KEITH G O'BRIEN
REA CROSS AND AUCHINCLOSS
1707 L STREET NW STE 570
WASHINGTON DC 20036 US

JOHN JAY ROSACKER
KS DEPT OF TRANSP
217 SE 4TH ST 2ND FLOOR
TOPEKA KS 66603 US

ROBERT D ROSENBERG
SLOVER & LOFTUS
1224 SEVENTEENTH ST NW
WASHINGTON DC 20036 US

RICHARD G SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE N E
WASHINGTON DC 20002 US

HAROLD A ROSS
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
1370 ONTARIO STREET 1548 STANDARD BUILDING
CLEVELAND OH 44113-1740 US

WILLIAM L SLOVER
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

RICHARD J SCHIEFELBEIN
WOODHARBOR ASSOCIATES
7801 WOODHARBOR DRIVE
FORT WORTH TX 76179-3047 US

PAUL SAMUEL SMITH
US DEPARTMENT OF TRANSPORTATION
400 SEVENTH STREET SW ROOM 4102 C-30
WASHINGTON DC 20590 US

JOHN SCHMITTER
DTE TRANSPORTATION SERVICES
350 INDIANA STREET STE 600
GOLDEN CO 80401 US

ROBERT SMITH
TWIN MODAL INCORPORATED
2621 FAIRVIEW AVE N
ROSEVILLE MN 55113-2616 US

THOMAS A SCHMITZ
PHB HAGLER BAILLY INC
1776 EYE STREET NW, STE 700
WASHINGTON DC 20006-3700 US

CHARLES A SPITULNIK
HOPKINS & SUTTER
888 SIXTEENTH ST NW
WASH DC 20006-4103 US

JAMES E SENNER
SIMPSON TIMBER COMPANY
PO BOX 460
SHELTON WA 98584 US

SCOTT N STONE
PATTON BOGGS L L P
2550 M STREET NW 7TH FLOOR
WASHINGTON DC 20037-1346 US

SAMUEL M SIPE JR
STEPTOE & JOHNSON LLP
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

STEVEN D STREGE
NORTH DAKOTA GRAIN DEALERS ASSOCIATION
118 BROADWAY SUITE 606
FARGO ND 58102 US

ROBERT G SZABO
1050 THOMAS JEFFERSON STREET NW SIXTH FLOOR
WASHINGTON DC 20007 US

ROBERT J WADE
TOYOTA LOGISTICS SERVICES INC
PO BOX 2991
19001 SOUTH WESTERN AVE
TORRANCE CA 90509-2991 US

VINCENT P SZELIGO
WICK STREIFF MEYER O'BOYLE & SZELIGO PC
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219-3427 US

DARRELL R WALLACE
BUNGE CORPORATION
PO BOX 28500
11720 BORMAN DRIVE
ST LOUIS MO 63146-1000 US

MERRILL L TRAVIS
ILLINOIS DEPT OF TRANSPORTATION
2300 S DIRKSEN PARKWAY RM 302
SPRINGFIELD IL 62764 US

CHRISTOPHER I WEST
NORTHWEST FORESTRY ASSOC
1500 SW FIRST SUITE 330
PORTLAND OR 97201 US

CHRISTOPHER TULLY
TRANSPORTATION COMMUNICATIONS
INTERNATIONAL UNION
3 RESEARCH PLACE
ROCKVILLE MD 20850 US

WILLIAM W WHITEHURST JR
W W WHITEHURST & ASSOCIATES INC
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030-1711 US

ROBERT A VOLTSMANN
TRANSPORTATION INTERMEDIARIES ASSOCIATION
3601 EISENHOWER AVENUE SUITE 110
ALEXANDRIA VA 22304 US

TERRY C WHITESIDE
WHITESIDE & ASSOCIATES
3203 3RD AVE N STE 301
BILLINGS MT 59101 US

ROBERT P VOM EIGEN
HOPKINS & SUTTER
888 16TH STREET N W STE 700
WASHINGTON DC 20006 US

THOMAS W WILCOX
THOMPSON HINE & FLORY LLP
1920 N STREET NW SUITE 800
WASHINGTON DC 20036-1601 US

TERRY J VOSS
AG PROCESSING INC
PO BOX 2047
OMAHA NE 68103-2047 US

MICHAEL S WOLLY
ZWERDLING PAUL LEIBIG KAHN THOMPSON
& WOLLY
1025 CONNECTICUT AVE NW SUITE 712
WASHINGTON DC 20036 US

FREDERIC L WOOD
THOMPSON HINE & FLORY LLP
1920 N STREET
WASHINGTON DC 20036-1601 US

SHIRLEY J YBARRA
COMMONWEALTH OF VIRGINIA
PO BOX 1475
RICHMOND VA 23218 US

EDWARD WYTKIND EXECUTIVE DIRECTOR
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
1025 CONNECTICUT AVE NW SUITE 1005
WASHINGTON DC 20036 US

DANIEL YOEST
CROSSROAD CARRIERS
1835 EAST PARK PLACE BLVD STE 107
STONE MOUNTAIN GA 30087 US